

Mr. Jose Alvarez
Phillips & Paolicelli, LLP
380 Madison Ave, 24th Floor
New York, NY 10017

Re: AES Puerto Rico, LP
FOIA Request No. EPA-R2-2013-005858

Dear Mr. Alvarez:

This is in response to your May 2, 2013 request under the Freedom of Information Act (FOIA), sent via electronic mail, for documents relating to AES Puerto Rico, L.P. (AES). The U.S. Environmental Protection Agency (EPA), Region 2, has concluded its search for documents encompassed by your FOIA request. EPA has interpreted your request to be seeking reports, letters, chemical analyses, memoranda, photos, environmental monitoring assessments and environmental analyses by or on behalf of EPA Region 2 in connection with the land placement of Agremax by AES. If you believe that EPA has mischaracterized or misinterpreted your request or if you have any questions regarding this matter, please contact Gary H. Nurkin, Assistant Regional Counsel at 212-637-3195.

Enclosed please find a compact disc with the requested documents, except that we are withholding several internal legal memoranda and other types of documents because they fall under either the deliberative-process process privilege and/or the attorney work-product privilege encompassed by FOIA Exemption 5, 5 U.S.C. §552(b)(5) or the release of that document will interfere with prospective administrative proceedings under FOIA Exemption 7(a), 5 U.S.C. § 552(b)(7)(A). These memoranda and other documents are approximately 534 pages in total and are identified on the attached list.

You may appeal this partial denial to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460 (U.S. Postal Service Only), e-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you submit your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, D.C. 20004. Your appeal must be in writing and must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should clearly identify the determination being appealed, including the assigned FOIA request number

shown above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosure

Documents Being Withheld in Response to FOIA Request No. EPA-R2-2013-005858

1. Two page Fact Sheet prepared by RCB on or about February 7, 2011 (and two prior drafts of this Fact Sheet prepared by RCB on February 6, 2011 comprising a total of five pages). This two page Fact Sheet together with the earlier drafts are being withheld as deliberative process privilege as well as because the release of the summary and/or the earlier drafts could reasonably be expected to interfere with a prospective administrative proceeding.
2. One page Fact Sheet prepared by RCB on or about December 20, 2011. This one page Fact Sheet is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
3. One page RCB Highlight prepared on or about February 3, 2012. The non-responsive material has been redacted and only the responsive material has been provided.
4. Thirteen page Draft LEAF Results prepared on or about August 24, 2012. This thirteen page Draft LEAF Results is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
5. Two page RCB Fact Sheet on Agremax prepared on or about March 7, 2012. This two page Fact Sheet is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
6. Forty-eight page Draft LEAF Report prepared on or about September 28, 2012. This forty-eight page Draft LEAF Report is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
7. One page LEAF Appendix prepared on or about October 1, 2012. This one page Appendix is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
8. Three page RCB Fact Sheet on Agremax prepared on October 3, 2012. This three page RCB Fact Sheet is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
9. Forty- nine page Draft LEAF Report prepared on or about October 4, 2012. This forty-nine draft LEAF Report is being withheld as deliberative process privilege and because

the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.

10. Seventy-three page Draft LEAF Report prepared on about October 11, 2012. This seventy-three page Draft LEAF Report is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
11. Forty-nine page Watermarked Draft LEAF Report prepared on or about October 12, 2012. This forty-nine page Watermarked Draft Report is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
12. Fifty-two page Draft LEAF Report prepared on or about October 12, 2012, This fifty-two page Draft LEAF Report is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
13. Forty-eight pages Draft LEAF Report prepared on or about October 17, 2012. This forty-eight page Draft LEAF Report is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
14. One page RCB Fact Sheet prepared on or about November 29, 2012. This one page Fact Sheet is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
15. Two Page Talking Points prepared by RCB on or about December 13, 2012. This two page talking points is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
16. Three page Fact Sheet AES/Agremax prepared by RCB on or about December 13, 2012. This three page fact sheet is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
17. Three page ORC fact sheet dated Feb. 7, 2013. Only two paragraphs of this three page fact sheet are responsive. Almost 2 and one half pages of this fact sheet are non responsive and do not relate to the FOIA request. The responsive paragraphs are being withheld as deliberative process privilege and/or attorney work product as well as because the release of those two paragraphs could reasonably be expected to interfere with a prospective administrative proceeding.

18. One page RCB Fact Sheet on Agremax prepared on or about February 11, 2013. This one page Fact Sheet is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
19. Four page Memorandum prepared on or about Feb. 11, 2013, from Gary H. Nurkin, Assistant Regional Counsel, to Eric Schaaf, Regional Counsel, EPA Region 2, regarding legal issues in the AES matter. This memorandum is being withheld as deliberative process privilege and/or attorney work product as well as because the release of this memorandum could reasonably be expected to interfere with a prospective administrative proceeding.
20. Two page Summary of Questions to be asked of AES prepared on or about February 11, 2013 (and two drafts of those questions totaling four pages). This summary together with the earlier drafts are being withheld as deliberative process privilege and/or attorney work product as well as because the release of the summary and/or the earlier drafts could reasonably be expected to interfere with a prospective administrative proceeding.
21. Four page Summary of call with David Buente and Sam Boxerman prepared on or about February 14, 2013, by Paul Simon, Deputy Regional Counsel (and two earlier drafts of that memorandum totaling seven pages). This memorandum together with the earlier drafts, are being withheld as deliberative process privilege and/or attorney work product as well as because the release of the summary and/or the earlier drafts of the summary could reasonably be expected to interfere with a prospective administrative proceeding.
22. Four page AES Coal Ash Placement Sheet prepared on February 13, 2013 (and forty-three previous editions prepared between March 30, 2011 and January 14, 2012 comprising about 99 pages). This AES Placement sheet together with the forty-three earlier drafts are being withheld as deliberative process privilege as well as because the release of the AES Placement sheet and/or the earlier drafts of the summary could reasonably be expected to interfere with a prospective administrative proceeding.
23. Two page AES Fact sheet prepared by RCB on or about February 13, 2013. This two page Fact sheet is being withheld as deliberative process privilege and because the release of the fact sheet could reasonably be expected to interfere with a prospective administrative proceeding.
24. Two page AES Environmental Issue Paper developed by the RCB of DECA dated Feb. 20, 2013. This fact sheet is being withheld as deliberative process privilege and because the release of the fact sheet could reasonably be expected to interfere with a prospective administrative proceeding.
25. One page RCB Fact Sheet prepared on or about February 20, 2013. This one page Fact Sheet is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.

26. One page CEPD weekly highlight dated February 21, 2013 redacted to remove non responsive information. Only the responsive information is being provided.
27. One page AES Sheet prepared by RCB on or about February 27, 2013. This one page AES Sheet is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
28. Five page AES Fact Sheet prepared by RCB on or about February 28, 2013. This five page Fact Sheet is being withheld as deliberative process privilege and because the release of the fact sheet could reasonably be expected to interfere with a prospective administrative proceeding.
29. Two page RCB Fact Sheet prepared on or about March 7, 2013. This two page Fact Sheet is being withheld as deliberative process privilege and because the release of the fact sheet could reasonably be expected to interfere with a prospective administrative proceeding.
30. Four page Memorandum prepared on or about March 7, 2013 (and two earlier versions of that memorandum totaling seven pages) by Gary H. Nurkin, Assistant Regional Counsel, EPA Region 2, regarding legal issues in the AES matter. This four page memorandum together with the earlier drafts is being withheld as deliberative process privilege and/or attorney work product as well as because the release of the memorandum and/or the earlier drafts could reasonably be expected to interfere with a prospective administrative proceeding.
31. One page RCB Fact sheet prepared on or about March 12, 2013. The one page Fact Sheet is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
32. Two page Memorandum prepared by RCB on or about March 12, 2013 (and an earlier draft prepared on March 8, 2013 comprising two pages) regarding Agremax. This two page memorandum together with the earlier draft is being withheld as deliberative process privilege as well as because the release of the memorandum and/or the earlier draft could reasonably be expected to interfere with a prospective administrative proceeding.
33. One page RCB Fact sheet on AES prepared on or about March 13, 2013 (and two earlier versions prepared on March 12, 2013 and March 13, 2013 comprising 2 pages). This one page Fact Sheet and the two earlier versions are being withheld as deliberative process privilege and because the release of the fact sheets could reasonably be expected to interfere with a prospective administrative proceeding.

34. Three page Action Items prepared by RCB on or about March 27, 2013. Only one paragraph of the Action Item is responsive. That one paragraph Action Item is being withheld as deliberative process privilege and because the release of the document could reasonably be expected to interfere with a prospective administrative proceeding.
35. Three page weekly ORC highlight dated March 28, 2013. Only one paragraph of this three page memorandum is responsive. The responsive paragraph is being withheld as deliberative process privilege and/or attorney work product as well as because the release of that paragraph could reasonably be expected to interfere with a prospective administrative proceeding.
36. Five page Draft Response to AES Comments/Concerns Regarding EPA Report on the Leaching Behavior of AGREMAX, prepared on or about April 4, 2013 by Greg Helms, to Gary Nurkin and Paul Simon. This document is being withheld as deliberative process privilege.
37. Comments by Paul F. Simon, Deputy Regional Counsel, on the Helms Response prepared on April 11, 2013. This comment is being withheld as deliberative process privilege and/or attorney work product.
38. Three page RCRA Highlight prepared on or about April 12, 2013. The nonresponsive parts have been redacted and only the one responsive paragraph is being provided.
39. Comments by Mark Maddaloni, Risk Assessor/Toxicologist on the Helms Response prepared on April 17, 2013. This comment is being withheld as deliberative process privilege.